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## CHAPTER 4

# **Agro-industries and territorial development: the role of land policies**

*Perrine Burnod, Jérémy Bourgoin and Élodie Valette*

In sub-Saharan Africa, countries are increasingly relying on the private sector to be a driver of development of their territories. In order to attract these domestic or foreign private operators, these countries extol the abundance of their land resources and ease of starting operations. After more than 20 years of land policies aimed at securing the rights of family farmers and at managing natural resources, land policies are now also focusing on facilitating the transfer of large agricultural lands to investors. Is this the start of a reverse agrarian reform, sweeping away in one go all the painstaking efforts of the past devoted to local land management and land tenure security? This chapter examines the nature of these changes and their implications for territorial development. It explores how experiences and tools acquired in the context of past land policies play or may play a role in the territorial integration of these firms. This chapter is based on two emblematic cases. The first is Senegal, a pioneer in innovations pertaining to territorial management and very active in welcoming agribusinesses in search of irrigated agricultural land. The second is that of Madagascar, home to land reforms that legally recognized customary rights and an El Dorado for many investors. Madagascar is also famous for the Daewoo scandal that underscored the sensitive dimension of land policies: the revelation that the Malagasy government was on the point of leasing about 1.3 million hectares of land for 99 years to Daewoo, the South Korean multinational, contributed to the fall of the incumbent president in 2009.

### **FROM ENHANCING THE SECURITY OF FAMILY FARMING TO WELCOMING AGRIBUSINESSES**

Land policies can affect the distribution of land tenure rights (allocating or transferring rights as in the case of land reforms), the securing of rights (registering rights through titles or certificates) and land management by defining which entities have the power to allocate and recognize rights. In Africa, throughout the 20th century, land policies shifted from an objective of granting rights to large agricultural enterprises (colonization) to an objective of securing the land tenure rights of family farms



(independent nations). Since the 1970s, land security policies have also evolved. They have transitioned away from an objective of imposing a private ownership system manifested by land titles and managed by the State administration (1970-1980) to a goal of recognition of customary rights and decentralization of land management (1990s to the present) (Le Roy, 1996; Colin *et al.*, 2009; Lavigne Delville, 2010). Do the transfers of thousands of hectares by African governments show a return to land allocation policies that benefit large companies? Or do they indicate renewed land policies that are attempting to combine objectives of allocating land to investors with past advances in local management of land?

In Madagascar, since the early 2000s, national and local government representatives have leased thousands of hectares to private companies and individual investors wanting to set up very large agricultural projects. In 2016, as a result of the abandonment of their projects by a large majority of economic operators<sup>1</sup>, only 50,000 hectares were leased in the agricultural sector and of these, only 10% were being actually used. The few agricultural enterprises still active have had very mixed impacts in terms of employment and investment in infrastructure (ranging from 1 to 100 jobs per 100 cultivated hectares).

In Senegal, municipalities, with the support of government services, have allocated thousands of hectares to private operators to the extent that some have even granted more land than they had (case of the municipality of Mbane)<sup>2</sup>. Investments continue to flow in for vegetable cultivation projects. At the request of local populations or on their own initiative, companies are getting involved in creating or improving local infrastructure (schools, irrigation canals) and in supporting the livestock sector (creation of water points, provision of crop residues).

## LOCAL LAND-RELATED INNOVATIONS NOT FULLY TAKEN INTO ACCOUNT

In Madagascar, since 2005, ongoing reforms have brought in two major innovations. First, they legally recognized customary ownership rights over untitled lands (lands belonging to the legal category of 'untitled private property'). Second, they decentralized the management of untitled private land to municipalities and empowered them to set up land offices and to issue land certificates<sup>3</sup> (one-third of the municipalities currently have land offices). However, these two major aspects have had a limited direct effect on the regulation of large-scale land transfers (Burnod and Andriamanalina, forthcoming). To begin with, the land selected for investments is mainly pastureland that is effectively in use by the herders but is not classified as untitled private property; the law does not consider animal grazing as an obvious or sufficient appropriation to

1. 90% of the 85 investors abandoned their project due to the political crisis (2009-2014), their lack of experience in agriculture, insufficient funding and difficulties in accessing land (obtaining the agreement of the government, on the one hand, and of local populations and authorities, on the other).

2. The government, engaged in a joint venture, has declassified a part of a sylvo-pastoral reserve, previously used by livestock herders, to accommodate a Senegalese-Italian company (SenHuile/SenEthanol).

3. Issued on the basis of a social consensus, the land certificate formalizes private ownership of property and is legally similar to a land title.



legally recognize the customary rights so it continues to classify such land as State domain (Law 2008-14). Moreover, the land transfers took place in municipalities that had not yet set up land offices. Finally, in spite of the legal requirements, customary owners were little involved in the selection and demarcation of land for investors. Those who did have this opportunity had neither the knowledge of the laws nor the support of land offices' staff to legally defend their lands and to claim that these lands belonged to the category of untitled private property. They did not oppose the land transfers, beguiled by promises of employment and infrastructure development, and reluctant to protest against projects they believed had the State's endorsement.

In Senegal, debates on land reform have been going on since 1996. In accordance with the 1964 law still in force, customary rights on national land are legally recognized as usage rights but not as property rights. Furthermore, since 1996, the municipalities have acquired new powers. They can allocate land temporarily (allocation procedure) to recognize occupation of land by existing farmers or to let new farmers use it. Since the 2000s, municipalities in the Senegal River valley have wholeheartedly invested in a coordinated management of their territory through the rollout of participatory land use and management plans (French acronym: POAS) (d'Aquino *et al.*, 2002). These plans have made it possible to establish a range of concerted management rules, which go beyond a mere zoning scheme. They have encouraged the recognition of a certain pluriactivity of local production areas or *terroirs* and reinforced the legitimacy of local authorities as managers of the municipal space. However, these new powers have not been systematically leveraged to good effect. With the support, or even the instructions, of the State and promises of benefits from private operators, some municipal officials have sometimes allocated large areas in contravention of the law that requires beneficiaries to reside in the municipalities and to obtain free and prior consent from local populations. Land use and management plans, which had allowed the creation of a range of concerted management rules, have sometimes been forgotten.

In both countries, priority has been accorded to operators willing to invest, with administrators ignoring – sometimes deliberately – land tenure laws and the rights of families of farmers or livestock herders living on the land concerned.

## **INNOVATIONS IN LAND SECURITY AND LAND MANAGEMENT**

Protests against large-scale land transfers broke out in Madagascar in 2009, and in Senegal a few months later, forcing policymakers to review their strategy of welcoming investors. The experience with land policies of the past has led to complex indirect effects: attempts at recentralization of land management by the governments, on the one hand, and greater participation of civil society in land governance, on the other.

Far from putting a halt to land transfers to investors, both countries' governments recentralized the management of these transfers, not only to capture the symbolic and economic benefits associated with these investment projects, but also to reassert their authority over decentralized entities (Burnod *et al.*, 2013). In Madagascar, starting in 2010, the land administration imposed an obligation on all investors to first approach the national government. In 2015, it decreed that the boundaries of private untitled



land should be frozen within the framework of municipal development schemes in order to identify State property and to create, under its primary responsibility, agricultural investment zones (MEPATE, 2015). In Senegal, the government launched the Sustainable and Inclusive Agribusiness Project for Senegal (French abbreviation: PDIDAS) in 2014, which promotes growth and employment by increasing private productive investments in agriculture (Louga and Saint-Louis regions). This project is trying out a new procedure to control access to land, with support from the reform commission: the State registers the land in the national domain in its name and leases it to the municipalities. The latter can then allocate this land to farmers or businesses through sub-leases. In each of these countries, these developments are undermining the process of decentralization, as procedures for allocating land to investors would now require approval from the national government. This process could encourage private enterprises to deal directly and exclusively with the State.

At the same time, the commitment, sometimes long-standing, of these countries to undertake land reform (in Senegal as part of the Agro-Sylvo-Pastoral Orientation Law of 2004) has gradually increased the interest in and capacities concerning land matters by civil society and local authorities (funding for civil society platforms concerning land; legal training for experts, elected officials and municipal officials; participation by all land users in drawing up land use and management plans). Civil society networks are therefore now very present in debates on land reform and on support for territorial land management. In Madagascar, civil society has thus been able to defend the protection of the rights of livestock herders under the new land policy. Similarly, the land observatory initially created to monitor land reform and which was later included in the ambit of ministerial responsibility, was able to make public information on leases issued by the State and the problems concerning security of land tenure of populations and investors. It has also proposed the development of legal and technical innovations. In Senegal, in 2015, the Framework for Reflection and Action on Land Tenure in Senegal (French acronym: CRAFS), which brings together many NGOs, initiated the setting up of an observatory of land governance. This mechanism to monitor land dynamics aims to promote tools of territorial management and reflections on how they can best be applied.

## CONCLUSION

Because they define the modalities of access to land and decide on the allocation of rights between competing users, land policies are at the heart of sustainable management of socio-ecosystems and territories, economic development and social justice. In the two countries we discussed in this chapter, the respective national governments grant investors a priority in access to land and, by allocating large areas and beneficial conditions for their operations, commit to the resulting land concentration. They are reaffirming their authority over the municipalities and their ownership of marginal and remote land (Madagascar) or of land known for its potential (Senegal) by registering land previously devoted to livestock herding or agriculture in the name of the State and then allocating it to private operators with foreign capital. At the same time, innovative land tenure mechanisms (laws protecting customary rights,



land offices, land use and management planning, etc.) have regulated large-scale land transfers indirectly through the reinforcement of actions and justification registers of civil society, and through support for land observatories. These innovations are key regulatory tools that must be promoted and defended politically so that they can become truly effective and be able to contribute to territorial development.

The contributions of each of these two countries' reforms could inform the debates in other countries on land management and diversify the ways in which civil society participates in territorial development. The experience of land use planning and management in Senegal could encourage the implementation of innovative tools in Madagascar to overcome the pitfalls of a top-down management scheme, to discuss competition in access to resources between users, and to accompany the political choices in this direction. Similarly, the experience of the land offices in Madagascar could be used for the creation of municipal land offices in Senegal and for informing the reflections on how best to help these local structures stimulate debates on land governance, and, where collectively desired and approved by the local population, identify suitable lands for private investors and compensations for local populations. The land observatory in Madagascar already plays – and the observatory on land governance being set up in Senegal will play – a fundamental role in this regard and are, in both cases, supported by the research community. They can lead to the capitalization of experiments and the monitoring of changes in land use and tenure. Above all, they provide platforms for debates on territorial issues. Bringing together a set of actors in a process of pooling and sharing of knowledge, they have to be the spearheads of innovative and concerted land policies.

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